



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 203761

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 2021, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock Cty Human Services regarding FoodShare benefits (FS), a hearing was held on December 22, 2021, by telephone.

The issue for determination is whether the agency correctly determined and seeks to recover FS overpayments in the amount of \$2,574 for the period from January 1, 2018 to June 30, 2018 (Claim [REDACTED]) and \$3,846 for the period from July 1, 2018 to June 30, 2019 (claim [REDACTED]).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By:

Rock Cty Human Services
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of California who at all times relevant to this matter lived in Wisconsin and received FS.

2. In the fourth quarter of 2016, [REDACTED] [REDACTED], a member of petitioner's FS assistance group, began drawing wages from his self-employment activity.
3. On November 26, 2017, petitioner completed a six month report form (SMRF) and failed to report correct household income, specifically failing to report that [REDACTED] [REDACTED] received a wage draw from his self-employment business in addition to business income.
4. On June 13, 2018, petitioner renewed her FS and failed to report [REDACTED]'s [REDACTED] self-employment wages.
5. On November 20, 2018, petitioner submitted a SMRF and failed to report [REDACTED]'s [REDACTED] self-employment wages.
6. On May 28, 2019, petitioner submitted a SMRF at which time she reported for the first time that [REDACTED] [REDACTED] took a wage draw from his self-employment business.
7. On June 6 2019, the agency identified a SWICA wage match discrepancy, showing that [REDACTED] [REDACTED] received wages from his self-employment business since 2016.
8. On November 15, 2021 the agency mailed a manual FS overpayment notice and overpayment worksheet to petitioner.
9. On November 16, 2021, the agency mailed a system generated overpayment notice to petitioner, informing her that she was overpaid FS benefits in the amount of \$2,574 of the period from January 1, 2018 to June 30 ,2 01 (Claim [REDACTED]) \$3,846 for the period from July 1, 2018 to June 30, 2019 (claim [REDACTED]).
10. On November 22, 2021, the Division received petitioner's request for hearing by telephone.

DISCUSSION

The agency is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3). Agency error recovery is limited, however, to the period of one year prior to discovery of the overpayment. All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FoodShare Wisconsin Handbook, §7.3.1.2. To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In a fair hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the department's contentions, meaning that it is more likely than not that the overpayment occurred. See, generally, 7 CFR §273.15 and §273.18; FSH, §7.3.1.8. The

On May 26, 2019, petitioner reported in her SMRF that [REDACTED] [REDACTED] paid himself wages from his self-employment business. The agency identified a discrepancy between what she reported and the SWICA wages, which were based on the Federal tax return for 2018. The agency learned that [REDACTED] [REDACTED] had earned wages from self-employment since the fourth quarter of 2016, which had not been reported during a series of renewal and SMRF interviews.

Petitioner testified that she reported income correctly to the agency monthly. She recalled completing self-employment report forms. The agency representative testified credibly that the self-employment

income forms that petitioner referred to pre-dated these overpayment periods and that by the time these overpayments occurred the only documentation petitioner provided was annual income tax forms. She provided a 2017 income tax form on or before June 15, 2018 and a 2018 tax form on May 29, 2019. The agency had no record of other communications regarding income. Case comments records show that petitioner called the agency on April 30, 2018 to close child care and on September 6, 2019 to report a move out of state, and at no other time.

To calculate the overpayment, the agency budgeted income of \$1,485.19 for the period from January 2018 to June 2018 and added \$1,000 for self-employment draw based on the average from 2017. For the period from July 2018 to December 2018, budgeted income decreased to \$705.91 and the \$1,000 draw continued unchanged. For the period from January 2019 to June 2019, budgeted wages remained at \$705.91 and the average draw increased to \$1,166.67, based on the 2018 average.

Petitioner presented no evidence at all that these income amounts are incorrect. She repeatedly insisted that her husband did not make much through self-employment but did not have any documentary or other reliable evidence to support a conclusion that the agency used incorrect wages.

Petitioner also asserted that the agency made an error because her 2017 income tax form was submitted on or about June 13, 2018, and at that time the agency should have realized that she had been reporting income incorrectly. The income tax for reported \$12,000 annual compensation officers for 2017 in addition to business income in the amount of \$8,471. In her November 26, 2017 SMRF, petitioner reported her own employment income and business income from her husband's self-employment but did not report the wages he paid himself.

The agency requires that petitioner submit to annual renewals and six month reviews and requires her at those times to correctly report information on which benefit eligibility is determined, including household income. It is entitled to rely on petitioner's reports. It did require that petitioner submit tax returns annually to verify self-employment income and she did that. The wage draw is reported on line 7 of IRS form 1120S. Self-employment business income is reported on line 21. It is unreasonable to ask the agency to disregard petitioner's reports and instead review every line of the tax form, including parts that are not relevant to the purpose it requires them for.

The agency established by a preponderance of the evidence that petitioner failed to report household income correctly and that, as a result, she was overpaid FS benefits as alleged.

CONCLUSIONS OF LAW

Petitioner was overpaid FS because she failed to timely report increased self-employment income at renewal and on the six month report form between November 2017 and April 2019. The agency correctly determined and seeks to recover FS overpayments in the amount of \$2,574 of the period from January 1, 2018 to June 30, 2018 (Claim [REDACTED]) \$3,846 for the period from July 1, 2018 to June 30, 2019 (claim [REDACTED]).

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

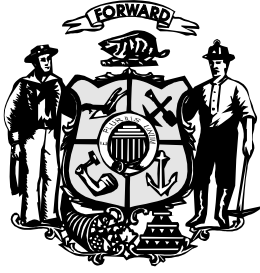
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of January, 2022


s

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 21, 2022.

Rock Cty Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability